that no decision on that matter had been given by the District Court. On 26th May, 1931, the appeal was heard by the Supreme Court of Palestin,e when they remitted the case to the Distritc Court of Jaffa, in order that the question whether consideration had been given for the promissory note might be considered and after evidence being given, if that should be thought necessary, be determined. The District Court heard evidence on the matter and on 9th November, 1931, they delivered judgmnt. They held that there was no real consideration for the promissory note, and being of opinion that the services rendered to the deceased by the respondent were not equivalent to the value of the note, they dismissed the action.

The respondent appealed to th Court of Appeal, and on 5th April, 1932, that Court allowed the appeal, set aside the judgment of the District Court, and entered judgment in favour of the respondent, with costs. The Courh of Appeal held that the burden was on the appellant to show that no consideration had been given by the respondent for the note, and that that defence had not been made out. They further held that it was not for the Court of first instance to enquire into the adequacy of the consideration for the note, but to consider whether or not there had or had not been any consideration given. By orders dated 26th May, 1932 and 17th September, 1932, the appellant obtained leave to appeal to His Majesty in Council and the appeal has now been heard. The appellant's counsel argued (1) that there was no consideration given for the promissory note, and (2) that the promissory note was obtained by undue influence on the part of the respondent, particularly in view of the relationship of husband and wife which subsisted at the date when the ntoe was made between the respondent and the deceased Fatmeh. With regard to the first ground of appeal, their Lordships are satisfied that consideration was given for the promissory note and that the judgment of the Court of Appeal on that point is unassailable. They are further of opinion that having regard to the terms of the promissory note the alleged inadequacy of consideration affords no relevant answer to a demand made upon it.

With regards to the plea of undue influence their Lordships are of opinion that inasmuch as the plea was not pressed in the Courts below, with the result that there is neither specific evidence nor any direct finding with regard to it, they are absolved from the necessity of dealing with the matter in detail now. It is manifest from the proceedings that it was open to the appellant to have urged the plea in the Courts below to an issue, in other words to have claimed and obtained a judicial decision upon it. The appellant omitted to do this and it is therefore quite impossible in their Lordships' opinion on the materials available to them to set aside the judgment appealed against and to affirm the plea of undue influence. Their Lordships are further of opinion that having regard to the sum at stake between the parties and to the protracted character of the litigation regarding it which ensued, it would not be reasonable or proper for the Board now to make a remit for enquiry into the question of undue influence as they were invited by the appellant to do and they must accordingly decline to take that course. In the circumstances recited, the appeal fails, and the appellant must pay the costs of it. Their Lordships will humbly advise His Majesty accordingly.

Appeal dismissed.

Solicitors: *Herbert Oppenheimer Nathan Vandyke & Mackay; Samuel Sebba.*

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[125] STRAITS SETTLEMENTS REPORTS [125]

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G. H. JOSHI v. UNITED INDIAN ASSOCIATION

[O.C.J. (Gordon Smith J.) March 2, 1936]

[Penang Suit No. 29 of 1936]

Club law — Threatened expulsion of member — Rule of association purporting to prohibit recourse to court of law.

The plaintiff was a member of the defendant association. That association had a rule which provided that no member should have recourse to a court of law in matters concerning the association. The plaintiff required the committee of the association to furnish him with information concerning what appeared to be irregularities in administration and as he did not get satisfaction he threatened to seek the assistance of the court. Thereupon the committee of the association threatened to expel the plaintiff from the association. The plaintiff thereupon commenced proceedings claiming an injunction to restrain such action.

Held: that even though there was provision in the rules prohibiting an appeal to courts of law, if an action was indispensable, the jurisdiction of the court could not be ousted by the rules because justice could not be done without the jurisdiction.

MOTION for interim injunction.

Conaghan for the plaintiff.

Ross and *Tah Ah Tah* for the defendants.

The facts and arguments are sufficiently set out in the judgment.

Cur. Adv. Vult.

Gordon Smith J.: The writ of summons in this action which was issued on the 30th January, 1936, claims an injunction restraining the defendant association, its committee, members, servants and agents from expelling the plaintiff from the association, from excluding him from the association premises, and from preventing him from exercising his rights and privileges as a member of the said association. The plaintiff further claims an injunction restraining the defendant association, as above, from calling upon the plaintiff to resign from the defendant association before the fourth day of February, 1936.

On the 4th February a motion was filed for an interim injunction pending the trial of the suit, in the terms endorsed on the writ, on the grounds:—

i. that rule 11 was 'ultra vires' and void as against public policy in that it endeavoured to oust the jurisdiction of the Court;

ii. that the notices dated respectively the 4th and the 11th of January, 1936, did not contain the charges of the alleged misconduct with sufficient particulars;

iii. that the expulsion of the plaintiff was not being exercised 'bona fide';

iv. that the acts of the plaintiff did not constitute misconduct and that rule 29 was also 'ultra vires,' as stated in paragraph 1.

The hearing of the motion was adjourned upon the undertaking of the association not to take any further steps in the matter pending such hearing. During the hearing the following authorities were quoted:—

Halsbury, 2nd ed., vol. 1, p. 35 at para. 36; vol. 4 at paras. 907, 910 and 912, vol. 7 at para. 231; old ed., vol. 22 p. 407, heading 'misconduct';

Wertheimer's Law relating to Clubs at pp. 11-13;

Butterworth's Encyclopaedia of Forms & Precedents, vol. 3, p. 614;

Kerr on Injunctions, 6th ed., at pp. 584 and 585;
Scott v. *Avery,* Rev. Rep. vol. 101, p. 392;
Doleman & Sons v. *Osset Corporation,* [1912] 3 K.B. 257;

Labouchere v. *Wharncliffe,* 13 Ch. D. 346;
Saunders v. *Jones,* 7 Ch. D. 435;
Fisher v. *Keane,* 11 Ch. D. 353;
Tantussi v. *Molli,* 2 T.L.R. 731;
Lyttleton v. *Blackburn,* 45 L.J. Ch. 223;
Dawkins v. *Antrobus,* 17 Ch. D. 615, at p. 636;
Atlantic Shipping Company v. *Louis Dreyfus & Co.,* [1922] 2 A.C. 250.

Rose and Frank & Co. v. *Crompton Bros.,* [1923] 2 K.B. 261;

Cipriani v. *Burnett,* [1933] A.C. 83;
Hopkinson v. *Marquess of Exeter,* 5 Eq. 63;
Richardson-Gardner v. *Fremantle,* 24 L.T.R. 81;
Lambert v. *Addison,* 46 L.T.R. 20;
Seaton v. *Gould,* 5 T.L.R. 309;
Baird v. *Wells,* 44 Ch. D. 661;
Weinberger v. *Inglis,* 19 App. Cas., 606;
Maclean v. *Workers' Union,* [1929] 1 Ch. 602.

The facts in this case are as follows:—

The plaintiff is a retired veterinary officer and came to live in Penang in August, 1931. He was elected a member of this association on the 20th of April, 1932, and a vice-president and on the committee, in the following June. He remained a vice-president and on the committee until he failed to be re-elected at the annual general meeting in October, 1935, at which meeting he was not present. In March, 1934, he first heard that there had, at one time, been a building fund of the association. On examination the balance sheets for 1932 – 1933 and finding no trace of any item relating to this fund and desiring information as to it, he wrote to the secretary of the [126] association by letter dated [126] the 27th March and asked the following questions:—

i. Is there a fund called 'The Building Fund' inaugurated for the sole purpose of erecting or securing a building for the United Indian Association? If so,

   a. when was the fund started?
   b. what is the total amount subscribed to date?
   c. Where is it kept? If in a bank, what interest has accrued, and the name of the bank?

Receiving no reply to this inquiry he sent a reminder to the secretary on the 12th April, 1934. Not receiving a reply either to his first or second letter, he consulted his solicitors with the result that they wrote on the 15th May complaining that their client was being denied information to which he was entitled and ended up, unfortunately, in my opinion, by threatening to seek the assistance of the Courts failing compliance with the request within seven days. The solicitors received a reply dated the 18th May that the plaintiff's letter (not their own letter) would be placed before the management committee at their next meeting.

Subsequently on the 24th May the secretary wrote to the plaintiff that his letters had been placed before the committee and would be discussed at the next committee meeting on the 31st May, which he was invited to attend.

The plaintiff consulted his solicitors on receipt of this letter, who wrote that in view of the failure of the committee to supply the desired information, their client did not think any useful purpose would be served by his personal appearance at the committee meeting, and they again requested that the information required should be communicated to them as his solicitors.

It is beyond my comprehension why the secretary did not at once supply the information as to the disappearance of the building fund, which was eventually contained in the association's solicitors letter of the 3rd January, 1936, instead of ignoring these requests to start with and then sending evasive replies.

After the holding of this meeting, the secretary wrote to the solicitors saying that as their client had been a vice-president of the association in 1932 and 1933 and was a member of the committee for the current year he was in full possession of all the information which he said he wanted. The solicitors then wrote that the persistent denial of this information left their client with no alternative but to proceed at law.

On the 8th of June, the secretary replied to this letter to the effect that the whole correspondence would be placed before a special general meeting, and in a further letter dated the 18th of June he informed the solicitors that the special general meeting called for the purpose unanimously approved and confirmed the action taken by the management committee and also drew attention to the rules of the association under which no member should have recourse to a Court of law pertaining to matters concerning the association.

The plaintiff did nothing further during 1934.

These facts and correspondence are not disputed, and, in commenting upon them, one can freely admit that both sides might easily have adopted a different attitude, which would probably have led to more harmonious relations.

It is true that during this period the plaintiff was a member of the committee and a vice-president, but it cannot, I think, be denied that he was perfectly justified in seeking information from the secretary of the association on a matter which admittedly may have been concluded before he joined the association but of which fact he had no knowledge whatsoever. One would also have expected that, if a building fund had been specifically created, there would have been

some record both in the minutes and in the accounts shewing how and when this building fund disappeared from the general accounts of the association.

It cannot be denied also that the replies vouchsafed by the secretary, presumably on the instructions of the committee were, to say the least, evasive and uncompromising, and anyone receiving such replies would be fully justified in pursuing further inquiries.

However, for the time being plaintiff dropped the matter.

In the following year, on the 4th of September, a special general meeting of the association was held to consider certain discrepancies in the accounts which had been discovered by the then treasurer, covering the period of the treasurership of his predecessor, Mr. Sebastian which amounted to over six hundred dollars. The plaintiff admits that he acquiesced in the decision given, (which was that in view of the fact that the discrepancies had been made good by Mr. Sebastian no action be taken) because he was not aware that the offences disclosed were not compoundable.

Having consulted his solicitors on the matter they wrote, on his instructions, on the 9th September, to the president of the association that he, the plaintiff, could not acquiesce in the course of action decided upon and considered that in the interest of the association and of the public the matter should be reported to the police or the Depublic Public Prosecutor.

Subsequently, a copy of this letter was sent by the solicitors to the Deputy Public Prosecutor who, [127] after being interviewed by the president [127] and his solicitors, wrote to the plaintiff's solicitors that he was not prepared to take action unless definite information was laid against Mr. Sebastian. He also stated that the president had informed him that he was prepared to supply the books of the association to anyone who wished to investigate them.

Subsequent correspondence passed between the plaintiff's solicitors and the association on the question of the examination of the books and the plaintiff even offered to make arrangements with a firm of accountants to make such investigations and pay their fees out of his own pocket. This offer was declined, nor was the plaintiff allowed to examine the books of the association with any professional assistance.

On the 26th of September, the plaintiff swore an information against the late treasurer who subsequently pleaded guilty to two charges.

The annual general meeting was held on the 3rd of October, 1935, at which the plaintiff did not attend, and he was not re-elected as a vice-president or as a member of the committee. It so happened that, at this meeting, a resolution was passed in the following terms:—

"In view of the question raised by a member who joined in April, 1932, with regard to the building fund said to have been created some years ago, it is hereby resolved that such a fund does not exist now and such fund in past years existed only as a book entry."

The plaintiff, not being present, and notice of this proposed resolution not having been circulated, he was unaware of the passing of the same, which apparently is the first official record in the minutes of the association of the disappearance of the building fund, and it was not until the 3rd January, 1936, that any definite information as to this building fund was ever supplied to the plaintiff.

Previously on the 24th of September he had been informed by the solicitors to the association that there was no building fund, and that their clients were not in a position to give any information with regard to the same.

One might repeat again that had a different attitude been adopted by both sides to the disputes possibly these proceedings would never have become necessary. It is, I think, greatly to be regretted that the association acted as it did in denying the formal requests, repeatedly made by the plaintiff, for information as to the affairs of the association, which he was perfectly entitled to obtain and which were either persistently ignored or evasive answers returned.

It is, however, true that he himself was on the committee and possibly might have obtained the desired information by means other than getting his solicitors to demand the same.

The correspondence between the parties and their solicitors became more acrimonious and a threat of proceedings was contained in various letters written on behalf of the plaintiff. These threats resulted in a formal notice being sent dated the 4th January, 1936 addressed to the plaintiff signed by the secretary informing him that, in the opinion of the members of the association, he had contravened rule 11, and requesting his attendance before the committee on the 10th January to explain why he should not be dealt with under the provisions of this rule.

On receiving this notice plaintiff consulted his solicitors, who wrote to the secretary informing him that the notice was bad as it did not set out any specific charge against their client and that rule 11 was void.

Apparently, the committee realised their mistake, as they addressed a further letter to the plaintiff, dated the 11th of January, purporting to be in continuation of the notice of the 4th of aJnuary, and requesting his attendance before the committee at a meeting on the 20th of January and in this notice the details of the complaints against him were given in the following terms:—

1. That you have on several occasions threatened to take proceedings against the committee of the association and are still so threatening, contrary to the provisions of rule 29 of the association.

2. That you, while being a member of the association, and a vice-president thereof, have consistently refused to be bound by the decisions of the committee or of the members of the association in general, or special meetings.

3. That your conduct is injurious to the character and interests of the association and is endangering the welfare and good order of the association.

The plaintiff attended this meeting but there is no record before the Court of what took place, except that which is contained in paragraph 6 of the secretary's affidavit of the 21st day of February, 1936, which reads:—

"On the 20th day of January, 1936, the plaintiff appeared before the Committee when charges were made against him. He merely said he had nothing to say."

However, on the following day a formal notice was addressed to the plaintiff by the secretary stating that, in the opinion of the committee, the interests of the association required that he should withdraw from the association and invited him to do so before the 4th February, 1936, and it went on to say that failing such withdrawal the matter would be submitted to the special general meeting of the association to be held on
[128] the 20th of February when he [128] would be allowed to offer any explanation of his conduct orally or in writing, after which a resolution for his expulsion from the association would be proposed. It also repeated the charges framed against the plaintiff as set out above.

The plaintiff alleges that the association are not acting 'bona fide' and bases such allegation on certain facts dealt with him in his affidavits, which facts are not admitted and to which replies have been filed.

I will deal with his allegation at a later stage of this judgment.

I have set out previously the four grounds on which this application is based, but before dealing with them specifically it is desirable to set out the principles which guide the Courts in interfering in disputes of this nature.

There was practically little conflict or disagreement between counsel as to what these principles are, the difficulty being in the application to them of the facts in this case.

They are to be found in numerous cases, many of which were cited to me and may conveniently be summed up in the words of Maugham J. in *Maclean* v. *The Workers' Union*, [1921] 1 Ch. 606 at pp. 621 and 622 in quoting Cotton and Bowen L.JJ.'s remarks in *Leeson* v. *The General Council of Medical Education and Registration*, 43 Ch. D. 366, Bowen L.J. said:—

"There must be enquiry.....

The accused person must have notice of what he is accused.

He must have an opportunity of being heard.

The decision must be honestly arrived at if he has had a full opportunity of being heard."

I adopt this statement of the law.

There is, however, a distinction to be made between the facts in this case and in any other cases quoted to me, in fact two distinctions:—

1. In no other case does it appear that the rules of the club or association prohibited or purported to prohibit an appeal to the courts against the decision of the members or governing body;
2. In no other case cited had application for an injunction been made where the machinery for expulsion only had been set in motion without expulsion having actually taken place.

This brings me to the first ground argued for the plaintiff, namely, that rule 11 (and also rule 29 referred to in ground IV) is 'ultra vires' in that it is void as being against public policy in that it endeavours to oust the jurisdiction of the Court.

Rule 11 reads as follows:—

(a) If any member shall misconduct himself either in or out of the club and after enquiry and opportunity for explanation given in the opinion of the committee such misconduct is injurious to the character and interest of the club or if any member be guilty of breach of the rules and bye-laws of the club, the committee shall have power to suspend such member for any period not exceeding three months. Any member so suspended shall have the right to appeal to a special general meeting and he may request the committee to call one for such purpose and the provisions of rule No. 20 B & C shall apply to the constitution of the meeting.

(b) In lieu of suspension, the committee shall be empowered to call upon any member who shall so have misconducted himself to tender his resignation from membership. If such member shall not resign within 14 days from the date of the notice, which shall be sent to him by registered post, the committee shall have power to call a special meeting of the club to deal with such matters and in the event of not less than 15 ordinary members being present at the meeting and not less than two-thirds of such members deciding by ballot or otherwise on the expulsion of the member concerned he shall cease to be a member of the club and shall forfeit all claims and privileges attached to membership and no appeal shall be made from the decision to any other meeting or to a Court of law. Notice of the meeting shall be given to the member concerned and he shall be entitled to attend thereat. C?

In effect, it was argued that by reason of the words "or to a Court of law" being added to the prohibition of appeal to any other meeting then the whole rule was 'ultra vires' and consequently void, and if this was so, then there was no provision in the rules for expulsion of members.

This argument was based on *Scott* v. *Avery*, Rev. Rep. Vol. 101, p. 392, in which it was held that it was a principle of law that parties cannot contract to oust the jurisdiction of the Courts, but that a condition precedent to refer a matter to arbitration before action was not unlawful and was enforceable.

[129] It is true that Lord Campbell said: [129]
"When an action is indispensable you cannot oust the jurisdiction over the subject because justice cannot be done without the jurisdiction."

Scott v. *Avery* did not say, however, that the jurisdiction had been ousted or that there was no liability under the agreement between the parties enforceable by a Court of law, but it provided an additional way of enforcing that agreement. I do not think that either this case or *Doleman & Sons* v. *Osset Corporation*, [1912] 3 K.B. 257 is authority for the proposition put forward. Nor did the defendants' counsel attempt to argue that the Court, by reason of the inclusion of these words in the rule, had no jurisdiction to entertain these proceedings.

It is probable, I think, that by including these words in the rule it was merely intended that members should not run to the Courts on every possible occasion to upset the decisions of general meetings on purely domestic matters. For this purpose such words are merely surplusage. I have set out earlier the conditions under which Courts will interfere with the decisions of domestic tribunals and I apprehend that it is on these grounds and on these grounds only that Courts will interfere whether or not there is a provision in the rules prohibiting an appeal to Courts of law.

As Lord Campbell said, "when an action is indispensable, you cannot oust the jurisdiction over the subject because justice cannot be done without the jurisdiction." In this case an action is indispensable to ascertain the legal right of the association to expel the plaintiff or to prevent his expulsion and to see that natural justice is done.

In my opinion the words have no effect and therefore do not abrogate or invalidate the earlier provisions of the rule. The plaintiff therefore fails in his submission under this head.

The second ground argued is that the notices of the 4th and 11th January do not contain sufficient particulars of the charges against the plaintiff. In other words, that he has not had sufficient notice of what he is accused.

I need not concern myself with the notice of the 4th January, as, on the face of it, it is insufficient and it was frankly admitted by counsel for the defendants that this was so.

It is necessary, therefore, to refer in detail to the notice of the 11th January only and the terms of this notice are set out earlier in this judgment.

In the first place, it should be noted that immediately each of these notices was received complaint was made that the first notice did not set out any specific charge, and as to the second notice that the complaints were not sufficiently set out in details to allow the plaintiff to prepare his answer thereto.

The first complaint is that on several occasions the plaintiff had threatened to take proceedings against the association and was still so threatening, and the second complaint averred that plaintiff had consistently refused to be bound by the decisions of the committee or of the general meetings.

No details whatsoever are given either of such several occasions or consistent refusals. It cannot be denied that if such statements had been contained in a pleading, say in an action for tort, it would have been immediately met with a demand for further and better particulars, which, if necessary, the Court would have ordered, and would have postponed further proceedings until such order had been complied with. One can, in this instance, substitute the immediate replies to the notices as a demand for further and better particulars, which demand has not been complied with.

The duties of a committee under such circumstances as in the present case are clearly set forth in the judgment of the Master of the Rolls in *Labouchere* v. *Wharncliffe,* 13 Ch. D. 346, and have not been carried out properly.

The plaintiff has been a member of the association since April 1932, during the greater part of which period he has been a vice-president and member of committee. There is nothing in any of the three complaints which gives any indication whatsoever of the date, time, place or nature of the alleged threats or refusals. Rule 29 refers to decisions of general meetings only, and not to decisions of the committee.

But, so it was argued for the defence, a strictly legal charge is not necessary so long as the member had sufficient knowledge of the charges to be investigated, and *Richardson-Gardner* v. *Freemantle,* 24 L.T.R. 81 was quoted in support. In this case, however, notice was given to the plaintiff giving specific details, with a date of the complaint made against him, and it cannot be compared with the notice in the present case.

Probably the plaintiff had some idea of the nature of the complaints against him which were to be enquired into but this does not, in my opinion, absolve the association from laying specific charges against him whether in a legal or non-legal form. How was the plaintiff to guess that steps that he had taken, in his belief in the interests of the association itself, including the laying of a criminal complaint against an ex-treasurer for frauds in connection with the accounts of the association, and on which a conviction was recorded, as being conduct on his part injurious to the character, interest, welfare and good order of the association?

As said by Jessel M.R. in *Fisher* v. *Keane,* 11 Ch. D. 435 :—

> "A committee acting under such a rule as this are bound to act, as Lord Hatherly said, according to the ordinary principles [130] of justice and are not to convict a man of a grave offence which shall warrant his expulsion from the club, without fair adequate and sufficient notice and an opportunity of meeting the accusations against him."

[130]

The fact that the plaintiff attended the meeting of the committee and stated that he had nothing to say is, in my opinion, immaterial, and he may probably have been advised not to say anything.

There is not the slightest evidence before the Court that the committee even enquired into these or any charges against the plaintiff, or the nature of their enquiries, before calling on the plaintiff under rule 11(b) to tender his resignation. Such an enquiry is a *sine qua non* before proceeding further in the matter.

In my opinion. the notice of the 11th January fulfilled none of the requisite conditions and it is not proved that in other respects also the committee acted in accordance with the rules.

The plaintiff, therefore, succeeds under this heading.

I can deal quite briefly with the remaining two grounds.

The third is, that the expulsion of the plaintiff was not being exercised *bona fide*.

The onus of proving '*mala fides*' on the part of the concrete evidence for the plaintiff is that he alleges defendant association is on the plaintiff. The only that difficulties have been put in the way of his paying his monthly subscriptions and he illustrates this by reference to a conversation with the collector on the 21st of November. The details of this conversation are in issue. Even if one accepts plaintiff's version as against that of the collector himself, I am not prepared to say that this constitutes *mala fides* on the part of the committee or members of the association.

It is in evidence that plaintiff sent subscriptions for August, September, and October by money order by registered post on the 1st October addressed to the treasurer. This is admitted by the treasurer who states, however, that he did not cash the money order or enter the payment, until the 22nd November, i.e., the day after this conversation with the collector. This not only seems rather significant but I must also criticise the danger of accepting a subscription in cash and keeping it for over six weeks without any form of acknowledgment whatsoever. No receipts are issued for subscriptions, a collecting-book being initialled either by the payee at the time or later by the treasurer. This method of dealing with the recording of payments of subscriptions is a bad one, and proper receipts should be issued and there should not be the slightest difficulty in doing so.

It is also alleged that it is to be inferred from the dispute between the plaintiff and the committee as to the accounts and disappearance of the building fund and as to the ex-treasurer's defalcations, that the subsequent steps to expel the plaintiff from the association, constitute *mala fides* on the part of the committee as being an act of revenge. One can well understand the plaintiff thinking that it is because he has endeavoured to rake up past events which, in his opinion have not been properly dealt with at the time and has probably been rather a thorn in the flesh of the committee in his endeavours to further the interests of the association, that consequently they want to get rid of him. Undoubtedly, these efforts of his have not commended themselves to his fellow committee-men, but I am not prepared to say that this is sufficient to constitute *mala fides*. There is, in fact, very little concrete evidence to go upon under this heading and therefore I am of the opinion that the plaintiff has failed to substantiate the charge in this respect.

The last ground set forth in the motion is that the acts of the plaintiff did not constitute misconduct and that rule 29 was also *ultra vires*. I will deal with the latter pointt first.

Rule 29 was not exhibited in evidence but it was stated during the argument (without objection being seriously pressed) to be as follows :—

"All decisions arrived at general meetings are final and no member shal have recourse to a Court of Law."

The same remarks apply to this rule as I made on rule 11 under the first ground and I would merely remark that such decisions are final so far as Courts of law are concerned and Courts will not interfere except for the reasons already stated.

As regards the first point, this pleading if I may so describe it, seems to me rather inconsistent with ground 11. In effect, plaintiff says I do not know what are the cts of misconduct of which I am accused, and I have agreed that this is so, and then he says but these acts are not acts of misconduct!

In any case it is not for this Court to say what constitutes misconduct on the part of a member in reference to the affairs of an association or club. That is for the members themselves to say and Courts will not, as I have already stated, interfere except under special circumstances.

The plaintiff therefore fails under this heading. There only remains one other point to deal with, which I mentioned earlier and that is as to no case having been found where an action has been brought before expulsion has actually taken place. I am definitely of the opinion that this is immaterial in regard to the facts in this case. Formal charges were made against the plaintiff by the committee and he was called upon to tender his resignation and told that if he failed to do so, a general meeting would be called and a resolution proposed for his expulsion. For the [131] reasons [131] I have given, I have held that the committee even at this stage, had acted wrongfully and the plaintiff is consequently entitled at this stage to come to the Court for relief. Possibly, a member might have acquiesced in such a request and have tendered his resignation knowing or believing all the time that the committee had so acted wrongfully. The same stigma would have attached as if he had been actually expelled.

In conclusion, I would remark that, while casting no reflections whatsoever on the plaintiff and I think that he has had every justification for instituting these proceedings, yet, if perhaps he had been a little more tactful he might have obtained the desired information in other ways without all this bother but I cannot conclude without expressing my surprise and regret at the attitude adopted towards the plaintiff by the committee and officials of the association as evidenced by the correspondence exhibited.

This motion is for an interim injunction and will be granted for the period of one month or until further order and I trust that in the interval the plaintiff and the committee and members of the association will be able to settle their differences harmoniously and without further application to the Court.

The plaintiff will have his costs of the motion.

Interim injunction granted.

Solicitors : *Wreford & Thornton; Logan, Ross & Samuel.*